

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

<b>SYLVESTER MILLER,</b>	)	
	)	
Petitioner,	)	
	)	
v.	)	Civ.Act.No. 08-178-GMS
	)	
<b>PERRY PHELPS</b> , Warden	)	
and <b>JOSEPH R. BIDEN, III</b> , Attorney	)	
General for the State of Delaware	)	
	)	
Respondents.	)	

**MOTION FOR EXTENSION OF TIME**

Pursuant to Rule 6 of the Federal Rules of Civil Procedure, respondents move for an extension of time in which to file an answer to the petition. In support thereof, respondents state the following:

1. The petitioner, Sylvester Miller, has applied for federal habeas relief, alleging error by the state courts. D.I. 1. By the terms of the Court's order, the answer is due to be filed on August 25, 2008. D.I. 9.
2. Counsel has begun reviewing Mr. Miller's comprehensive petition. Unfortunately, counsel will be out of the office for the next two weeks. Counsel will also be out of the office for a week in early September for a training event. In the interim, counsel will be assuming a new position in the Department of Justice and assuming a full caseload of felony prosecutions. Given counsel's upcoming schedule, more time is needed to complete the response to Mr. Miller's petition. Counsel now anticipates that response should be completed on or before September 5, 2008.

3. Under Habeas Rule 4, the Court has the discretion to give respondents an extension of time exceeding the 40-day limit in Civil Rule 81(a)(2). *Clutchette v. Rushen*, 770 F.2d 1469, 1473-74 & n.4 (9<sup>th</sup> Cir. 1985); *Kramer v. Jenkins*, 108 F.R.D. 429, 431-32 (N.D. Ill. 1985). The comment to Rule 4 expressly states that the district court has "the discretion to take into account various factors such as the respondent's workload" in determining the period of time that should be allowed to answer the petition.

4. This is respondents' first request for an extension of time in this case.

5. Respondents submit that an extension of time to and including September 5, 2008, in which to file an answer is reasonable. Respondents submit herewith a proposed order.

/s/Kevin M. Carroll  
Deputy Attorney General  
Department of Justice  
820 N. French Street  
Wilmington, DE 19801  
(302) 577-8500  
Del. Bar. ID No. 4836  
Kevin.Carroll@state.de.us

DATE: August 8, 2008

**RULE 7.1.1 CERTIFICATION**

I hereby certify that I have neither sought nor obtained the consent of the petitioner, who is incarcerated and appearing *pro se*, to the subject matter of this motion.

/s/ Kevin M. Carroll  
Deputy Attorney General

Counsel for Respondents

Date: August 8, 2008

**CERTIFICATE OF SERVICE**

I hereby certify that on August 8, 2008, I electronically filed the attached documents with the Clerk of Court using CM/ECF. I also hereby certify that on August 8, 2008, I have mailed by United States Postal Service, the same documents to the following non-registered participant:

Sylvester Miller  
No. 532861  
James T. Vaughn Correctional Center  
1181 Paddock Road  
Smyrna, DE 19977

/s/Kevin M. Carroll  
Deputy Attorney General  
Department of Justice  
820 N. French Street  
Wilmington, DE 19801  
(302) 577-8500  
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**SYLVESTER MILLER,**

Petitioner,

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Civ.Act.No. 08-178-GMS

**PERRY PHELPS**, Warden  
and **JOSEPH R. BIDEN, III**, Attorney  
General for the State of Delaware

Respondents.

## ORDER

This \_\_\_\_\_ day of \_\_\_\_\_, 2008,

WHEREAS, respondents having requested an extension of time in which to file an answer, and

WHEREAS, it appearing to the Court that the requested extension is timely made  
and good cause has been shown for the extension,

IT IS HEREBY ORDERED that respondents' answer shall be filed on or before September 5, 2008.

United States District Judge